IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.971 OF 2005

Dilip Babruwan Manjre ... Petitioner
Versus.
State of Maharashtra & others. ... Respondents.

Shri Rajan Salvi, Advocate (appointed) for the Petitioner.

Shri R.Y.Mirza, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 10th August, 2005.

P.C.:

1. Heard the learned Counsel for the Petitioner and the learned A.P.P. for the State.

2. The challenge in this petition is to order dated 30th December 2004 passed by the Competent Authority by which the Application for furlough leave made by the Petitioner under the Prisons (Bombay Furlough and Parole) Rules 1959, has been rejected. Relying upon Rule 4(4) of the said Rules of 1959, the Application is rejected on the ground of adverse Police report.

3. The learned A.P.P. has produced a copy of the adverse Police Report dated 8th December 2004. The Police report records that the age of the surety i.e. father of the Petitioner is 75 years and therefore, he will not be in a position to control the Petitioner.

The second ground in the Police report is that the house of the Petitioner and the house of a relative of the victim of the offence committed by the Petitioner are close by and therefore, there is apprehension that there will be a fight.

4. It cannot be said that the age is a factor which cannot be considered while deciding whether the surety can be accepted, but the same cannot be the only ground on which surety could have been rejected. It is not stated in the Police report that the father of the Petitioner is infirm or sick or physically weak. The second ground is vague. The report does not record the name of the alleged relative of the deceased whose house is close to the residence of the Petitioner. On such a vague ground the Application could not have been rejected by invoking sub-rule (4) of Rule 4 of the said Rules of 1959. Surety offered by the Petitioner cannot be rejected only on the ground of age without making any further enquiry about the status of health of the surety. In my view, the order impugned deserves to be quashed and set aside with a direction to the Competent Authority to consider the application made by the Petitioner afresh in the light of the observations made in this judgment.

5. The order dated 30th December 2004 is quashed and set aside. The Competent Authority is directed to

decide the Application dated 31st August 2004 made by the Petitioner for grant of furlough leave afresh in the light of observations made in this Judgment.

6. The application shall be considered and decided afresh within a period of 12 weeks from today.

7. A copy of this order be forwarded to the Petitioner.

Judge.